

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0109014160:

ANN THOMPSON,)	Case No. 803-2011
)	
Charging Party,)	
)	ORDER GRANTING
vs.)	SUMMARY JUDGMENT
)	
COMMUNITY MEDICAL CENTER,)	
)	
Respondent.)	

* * * * *

Ann Thompson filed a complaint against Community Medical Center, alleging illegal disability and age discrimination and retaliation. CMC filed three separate motions for summary judgment, one on each of those. At the same time, CMC also filed a motion in limine to preclude certain hearsay evidence from being offered at hearing.

Thompson opposed all four motions. After the motions were fully briefed, the Hearing Officer allowed oral argument, at the time set for the telephonic final prehearing conference. At the end of the hour the Hearing Officer had allotted, all four motions were deemed submitted. CMC’s counsel requested additional time to present argument specific to the age discrimination, but that request was denied.

I. MOTION IN LIMINE IS GRANTED FOR DECIDING THE MOTIONS

CMC moved to exclude evidence from Thompson about statements allegedly made by Thompson’s supervisor, Mike Biggins to non-testifying third parties, on hearsay grounds. Thompson argued that her testimony will not be hearsay, because it will not be offered to prove the truth of what was said, but to prove that it was said to Thompson, thereby supporting the reasonableness of her retaliation claim.

CMC specifically noted that this motion was made to comply with the motions deadline, to cover the “unlikely event” that CMC did not prevail on its motions for summary judgment on the merits of all of Thompson’s claims. The Hearing Officer will consider and rule upon the motion in limine first, to make the scope of record clear for purposes of deciding the summary judgment motions. This ruling addresses the testimony of Thompson that she heard two persons (Dr. Kaneta and Tara Booth) say that they heard Biggins make statements about (a) her age, (b)

her pace-maker and/or (c) her complaints about his statements about her age or her pace-maker.

Hearsay is a statement made outside of the declarant's testimony at hearing which is offered into evidence to prove the truth of what the declarant said. Mont. R. Ev. 801(c).

For purposes of the summary judgment motions, what Thompson says, even under oath, about what she heard Kaneta and Booth say is hearsay if it is offered to prove that what Kaneta and Booth said is true. What Thompson wants to establish is that what Kaneta and Booth allegedly said to her (that they heard Biggins say things about Thompson) is true. Her argument that all she wants to do is prove that Kaneta and Booth made the statements, to show that her belief that she was being discriminated against is reasonable, which can be an element of a retaliation claim. Since Thompson herself referred to the statements of the other employees as "gossip," mere proof that she heard the statements is not enough to make them admissible. Only if she heard the statements and reasonably believed them to be true is her reliance upon them reasonable. Reliance upon the truth of gossip is certainly not reasonable.

For her reliance upon them to be reasonable, the statements would have to have circumstantial guarantees of reasonableness. There are 23 specific exceptions to the rule that hearsay is inadmissible, each of which applies whether or not the declarant is available to testify as a witness. Mont. R. Ev. 803. There are another additional 4 specific exemptions which apply if the witness is not available to testify. Mont. R. Ev. 804(b). Both rules also state that hearsay is admissible when there are other "comparable circumstantial guarantees of trustworthiness." Rule 803(24) and 804(b)(5). Thompson has not offered any hearsay exceptions to allow the hearsay into evidence for use during this summary judgment proceeding, but has rested her offer of her testimony about what she heard Kaneta and Booth say solely upon her argument that she is not offering them to prove the truth of what they said.

Therefore, Thompson's proffer of what she heard Kaneta and Booth say is not admissible in support of her opposition to CMC's motions for summary judgment.

II. MOTIONS FOR SUMMARY JUDGMENT ARE GRANTED

CMC has relied upon the same record, very nearly the same legal authorities, and for the most part, the same arguments in all three of its summary judgment motions. The legal underpinnings regarding summary judgment in favor of a respondent in Human Rights Act cases, applicable to all three motions, are as follows.

Montana's Rules of Civil Procedure and Rules of Evidence apply in this case. Mont. Code Ann. §§49-2-204(2) and 505(3)(a); "Order Setting Contested Case Hearing Date and Prehearing Schedule" (Nov. 22, 2010).

Summary judgment is proper when the movant establishes that there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Mont. R. Civ. P. Rule 56(c). The movant "must establish both the absence of genuine issues of material fact and entitlement to judgment as a matter of law. Once the [movant] has met its burden, the opposing party must present material and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact." *Stuart v. First Security Bank*, ¶16, 2000 MT 309, 302 Mont. 431, 15 P.3d 1198 (citations omitted); *Hash v. U.S. W. Comm. Servs.* (1994), 268 Mont. 326, 886 P.2d 442, 444.

Summary judgment fosters judicial, or in this case, administrative economy, by eliminating the burden and expense of unnecessary litigation. *Berens v. Wilson* (1990), 246 Mont. 269, 806 P.2d 14, 16. CMC, the movant, has the burden of establishing the absence of any genuine issue of material fact and its entitlement to summary judgment as a matter of law. *Taylor v. Anaconda Federal Credit Union* (1976), 170 Mont. 51, 550 P.2d 151, 154. If CMC demonstrates that no genuine issue of material fact exists, then the burden shifts to Thompson to present material and substantial evidence raising a genuine issue of material fact. *Taylor*.

Mere conclusory statements are insufficient to create genuine issues of material fact. Disagreement over the interpretation of facts is not a genuine issue of material fact. *Sprunk v. First Bank Systems* (1992), 252 Mont. 463, 830 P.2d 103, 105.

For Montana anti-discrimination law, *Heiat v. E.M.C.* (1996), 275 Mont. 322, 912 P.2d 787, 793, states the appropriate summary judgment standard when the defendant (respondent) moves for summary judgment. That standard applies in this case as follows. First, Thompson's allegations must state prima facie cases on her three claims (disability and age discrimination in employment and retaliation).¹ Second, CMC must proffer evidence that shows a legitimate, non-discriminatory reason for each action alleged to be discriminatory or retaliatory.² Third, if the CMC

¹ It may strike the reader as odd that analysis of CMC's summary judgment motions begins with whether Thompson has stated a prima facie case on her claims. A more precise statement of how this aspect of the Heiat standard unfolds would be that CMC, in its motion and supporting brief, states the prima facie case elements of Thompson's claims, pointing out any fatal lacks therein. Thompson then has the opportunity to refute CMC in her response filings.

² Although the discrimination summary judgment cases rarely spend much verbiage on this, CMC can also present, and has presented, facts that refute one or more of the elements asserted in Thompson's three prima facie cases.

shows such reasons, Thompson must then produce evidence that, viewed most favorably to her, is sufficient to support a prima facie case, as well as evidence which raises an inference (a dispute about a material fact) that CMC's legitimate reason or reasons are pretextual. Heiat at 793.

This summary judgment standard applies to discrimination cases premised upon circumstantial rather than direct evidence. E.g., *Reeves v. Dairy Queen, Inc.*, 1998 MT 13, ¶¶ 14-15, 287 Mont. 196, 953 P.2d 703. Direct evidence is "proof which speaks directly to the issue, requiring no support by other evidence" and proving a fact without resort to either inference or presumption. *Black's Law Dict.*, p. 413 (5th Ed. 1979).

Under the particular facts in *Reeves*, the Court applied the direct evidence standard (which requires a higher level of proof in defense against the claim) because the parties did not dispute that the employer took adverse action against the employee, but only disagreed about whether the adverse action constituted illegal discrimination. *Reeves* at ¶16.

Subsequently, in *Laudert v. Richland County S. D.*, ¶29-30, 2000 MT 218, 301 Mont. 114, 7 P.3d 386, the Court ruled that even though the parties did not agree about whether there had been adverse action, such agreement was not the sine qua non for deciding which standard to apply, that what mattered was whether the plaintiff or charging party had presented direct, as opposed to circumstantial, evidence of illegal discrimination. In *Laudert*, the charging party proved that the employer had expressly considered his disability during the hiring process, asking him during his interview about his ability to do the job with his disability without a prior conditional offer of employment, and then considering his disability in deciding not to hire him. This was direct evidence of discrimination, which precluded application of the Heiat standard, without regard to whether the parties agreed that there had been adverse action.

Direct evidence can relate to adverse action and to discriminatory intention. *Foxman v. MIADS*, HRC #8901003997 (June 29, 1992) (race discrimination); *Edwards v. Western Energy*, HRC #AHpE86-2885 (August 8, 1990) (disability discrimination); *Elliot v. City of Helena*, HRC Case #8701003108 (June 14, 1989) (age discrimination). On the record in the present case, Thompson has no admissible direct evidence of Biggins' alleged biases and retaliatory animus. Her case necessarily is built upon inferences from circumstantial evidence, and Heiat applies.

For indirect evidence cases of illegal discrimination (including retaliation), Montana applies the burden-shifting inferential analysis developed by the United States Supreme Court in *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792.

Laudert, ¶120; Rolison v. Bozeman Deac. Health Serv., Inc., ¶117, 2005 MT 95, 326 Mont. 491, 111 P.3d 2002; Admin. R. Mont. 24.9.610. For all three of Thompson’s claims, the analysis has the same Heiat structure – did Thompson allege a prima facie case; did CMC present evidence of a legitimate non-discriminatory reason for its actions and/or evidence to refute Thompson’s prima facie case³; and then, did Thompson present evidence of pretext and/or evidence to rehabilitate her prima facie cases from any refutation by CMC?

Thompson’s assertions are set forth most clearly in her June 29, 2011, filing dated June 27, 2011.⁴ CMC’s evidence of legitimate, non-discriminatory reasons for its allegedly discriminatory or retaliatory actions and its evidence refuting Thompson’s prima facie cases appear in its motion filings, both initially and in its replies. Thompson’s evidence of pretext, as well as evidence to rehabilitate her prima facie cases from any refutation by CMC, appears in her response filing opposing the motions.

II. A. DISABILITY DISCRIMINATION IN EMPLOYMENT

To assert a prima facie case of disability discrimination, Thompson must allege that she is an individual with a disability, otherwise qualified for her employment and has suffered adverse employment action because of her disability. See gen. Admin. R. Mont. 24.9.610(2)(a).

Thompson alleged (contended) that her immediate superior, Biggins, reduced her shifts and ultimately eliminated her employment because he perceived her as disabled due to her cardiac condition, for which she wears a pace-maker. She alleged that this occurred even though she was more proficient and qualified at her job than the other employees performing the same work. Thompson sufficiently alleged the three elements of her disability discrimination prima facie case.

CMC contended that it reduced Thompson’s hours for a legitimate, non-discriminatory reason – because of her excessive EEG exam times, at a point in time when CMC had to make 5% cuts in all of its departments.⁵ CMC marshaled a wealth of evidence in support of this defense.

³ Although the discrimination summary judgment cases rarely spend much verbiage on this, CMC can also present, and has presented, facts that refute one or more of the elements asserted in Thompson’s three prima facie cases.

⁴ This pleading was erroneously captioned “Respondent’s Contentions of Fact, Conclusions of Law, Witness List, Exhibit Identification, Identification of Discovery, Request for Subpoenas and Request for Relief,” but it is clearly Thompson’s filing.

⁵ CMC also argued other defenses for all three claims, but the sufficiency of the identified defense makes it unnecessary to reach the additional defenses.

On March 4, 2009, Department Director Biggins sent a memo to his respiratory therapist and EEG staff regarding the need to make scheduling changes to improve efficiency in scheduling workloads. Biggins was under a directive from CMC senior management that each department, including his, needed to reduce its expenses by 5% over six months (starting in February 2009) due to reduced funding and revenue.

Back in 2007, Thompson had, at her own request, become a Temporary per Diem (“TPD”) employee, so that she was paid per hour for the time spent working., rather than being paid per EEG exam performed. She was essentially an on-call employee. She was not guaranteed that CMC would call her for any set number of hours. She could decline to work up to half of the days for which she was called. Her actual working days in 2009, as a TPD, were as follows.

January	14 days
February	13 days
March	10 days
April	12 days
May	8 days
June	8 days
July	10 days
August	4 days
September	4 days
October	6 days
November	3 days
No days worked in December	

Beginning in October 2008, Biggins had been trying to get Thompson to take less time to complete the EEG exams she performed. Thompson was paid for each hour she worked. CMC was paid a set amount per exam. The longer Thompson worked to complete an exam, the less CMC made on the exam. The goal set for Thompson in October 2008 was to get her time down to 2 hours per exam. Another employee who performed many of EEG exams was meeting that goal. Thompson was not. Despite Biggins’ continuing efforts to work with Thompson to get her exam time down to that goal, she did not achieve it. After July 2009. Biggins no longer did detailed tracking on Thompson’s times, but looking at her times thereafter, he could see that she still had not met the goal.

In March 2009, Biggins implemented a change in scheduling the tasks for respiratory technicians (who had some cross-training work on EEGs) and EEG staff. The purpose of the change was to schedule exams closer together, to “fill up” schedule days. At that time, Biggins told Thompson that her exams would decrease,

because she took longer to complete an exam, and other staff (who performed the tests within 2 hours) could be scheduled for more exams on a single day as a result.

In April 2009, at a meeting with Biggins about how things were going, Thompson complained that Biggins was commenting to other staff about her age and her pace-maker. Biggins told her he was not doing so. He included her complaint in his notes of the meeting.

Biggins knew about Thompson's pace-maker because she told him about it after she had an Emergency Room visit. Biggins had some experience as a pace-maker tech and they discussed its functioning. Contrary to Thompson's argument, this fact alone did not establish her prima facie case. There is no evidence in this record that the conversation included questions or discussion about her capacity to perform her job, unlike the questions and discussion during the hiring interview in Laudert that is discussed herein at page 4. The conversation Biggins and Thompson had establishes his knowledge of her pace-maker, but does not establish that he regarded her as disabled.

In June 2009, a neurologist at CMC requested more nationally credentialed EEG technicians for neurodiagnostic services that CMC was developing, instead of the continued use of cross-trained respiratory technicians for EEG exams. Biggins began looking at hiring Paula Yelin as an additional credentialed EEG technician.

In July 2009, at a meeting with Biggins and HR Manager Janine Unruh, Thompson again complained that Biggins was commenting to other staff about her age and her pace-maker. Biggins noted her complaint again, and again denied it.

Biggins did hire Yelin in August 2009, at a time when another EEG technician was going on maternity leave, as well as to satisfy the neurologist's request for additional credentialed EEG technicians. When the other technician returned from maternity leave, there were fewer exams for Thompson, who still could not be scheduled as "tightly" because she could not complete an exam in two hours.

In November and December, Biggins averred that he made repeated attempts to contact Thompson, about scheduling (including some tests to perform) and about her annual evaluation. He also avers that he was developing alternative job duties for Thompson, who he liked and respected, but was unable to make contact with her about any of these matters. Thompson avers that there was one phone call.

Thompson did not work any hours on any days after November 2009. On December 21, 2009, Thompson filed her complaint alleging disability and age discrimination and retaliation. She was still carried in CMC's records as a current TPD employee.

CMC established legitimate non-discriminatory reasons for the decreases in Thompson's hours, and refuted Thompson's assertions that it had taken adverse employment action against her because Biggins perceived her as disabled. The burden shifted to Thompson to show pretext and/or rehabilitate her prima facie case.

“[A] reason cannot be proved to ‘be a pretext for discrimination’ unless it is shown both that the reason was false, and that discrimination was the real reason.” Heiat at 791 (quoting *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993)) (original emphasis).

Thompson's counsel ably argued that there are questions that she can ask about whether Biggins may have been influenced by a perception that Thompson was slow in procedures because of her cardiac problems. However, argument over interpretation of facts does not create a genuine issue of material fact. Sprunk. Argument that Biggins admitted that Thompson complained about comments he allegedly made to other employees does not establish a fact question about whether he made such comments, without proof that someone heard him make those comments. Argument that Biggins confirmed talking with Thompson about her pace-maker does not create a fact question about whether he improperly considered her pace-maker in assignments of EEG exams, with any evidence that such an improper consideration, rather than his concern about the time it took her to perform the exams, actually played in part in his assignments.

There is no a scintilla of credible evidence that Biggins talked to other employees about Thompson's age, pace-maker or anything else. There is likewise no evidence, as opposed to argument, that Biggins reduced Thompson's assignments, hired Yelin, or took any of the other actions he took, because he harbored a perception that Thompson was disabled. There is a great deal of evidence that his actions were necessitated by the business realities and needs of CMC.

When CMC produced evidence of a legitimate, nondiscriminatory reason for its challenged actions, Thompson then had the burden of presenting evidence sufficient to permit the inference that the reason offered by CMC was a pretext for unlawful discrimination or illegal retaliation. This is nothing more than a rewording of Admin. R. Mont. 24.9.610(4), to recognize that enough evidence to raise a genuine question of material fact about pretext should be enough to preclude summary judgment. But the question of material fact can only be genuine if Thompson presents at least enough evidence that CMC's explanation for its challenged actions is not credible and is unworthy of belief, not to convince the fact finder of pretext, but simply to permit the fact finder to decide the issue either way.

Disability discrimination in employment is taking adverse action based upon distinctions in a term, condition, or privilege of employment, based on disability, despite the absence of any requirement for the distinction due to the reasonable demands of the position. Mont. Code Ann. § 49-2-303(1)(a); see also, Saucier ex rel. Mallory v. McDonald's Rests. of Mont., Inc., ¶38, 2008 MT 63, 342 Mont. 29, 179 P.3d 481. On the present record, no reasonable fact-finder could decide that CMC reduced her hours⁶ against Thompson because of her cardiac condition. There being no genuine question of material fact and the record establishing CMC's entitlement to judgment as a matter of law, summary judgment in favor of CMC, that it did not illegally discriminate against Thompson in employment because of a perceived disability, is proper.

II. B. AGE DISCRIMINATION IN EMPLOYMENT

To assert a prima facie case of age discrimination, Thompson must allege that she is an individual qualified for her employment and has suffered adverse employment action because of her age. See gen. Admin. R. Mont. 24.9.610(2)(a).⁷

Thompson contended that her immediate superior, Biggins, reduced her shifts and ultimately eliminated her employment because of her age. She alleged this occurred even though she was more proficient and qualified at her job than the other employees performing the same work. It is safe to infer on the present record, for purposes of this motion, that Biggins knew about Thompson's age (over 70 years old) and that she was older than the other employees performing the same job. Thompson sufficiently alleged the three elements of her age discrimination prima facie case.

CMC interposed the same "legitimate, non-discriminatory reasons" evidence to meet the age discrimination claim as it did for the disability discrimination claim. CMC's credible admissible evidence that Thompson's EEG exam times were excessive at a time when CMC had to make 5% cuts in all of its departments shifted the burden to Thompson to show evidence of pretext.

The analysis of Thompson's evidence and arguments about pretext in the disability discrimination claim likewise applies to her evidence and arguments about the age disability claim.

⁶ It is unnecessary for the Hearing Officer to decide whether the diminishing hours Thompson worked in 2009, under these facts, was an adverse employment action.

⁷ CMC's reliance upon federal cases and statutes, out of which it argues that unless Thompson was "replaced" by a younger worker there can be no age discrimination claim, is misplaced in light of Montana's far more general statutory and regulatory definitions of age discrimination, which do not limit adverse action to replacement by a younger worker..

“[A] reason cannot be proved to ‘be a pretext for discrimination’ unless it is shown both that the reason was false, and that discrimination was the real reason.” Heiat at 791 (quoting St. Mary’s Honor Ctr. v. Hicks, 509 U.S. 502, 515 (1993)) (original emphasis). Also, argument over interpretation of facts does not create a genuine issue of material fact. Sprunk.

Since CMC produced evidence of a legitimate, nondiscriminatory reason for its challenged actions in response to a prima facie case, Thompson must present evidence sufficient to permit the inference that the reason offered by the respondent is a pretext for unlawful discrimination or illegal retaliation.

Age discrimination in employment is taking adverse action based upon distinctions in a term, condition, or privilege of employment, based on age, despite the absence of any requirement for the distinction due to the reasonable demands of the position. Mont. Code Ann. § 49-2-303(1)(a). On the present record, no reasonable fact-finder could decide that CMC took adverse employment action⁸ against Thompson because of her age. There being no genuine question of material fact and the record establishing CMC’s entitlement to judgment as a matter of law, summary judgment in favor of CMC, that it did not illegally discriminate against Thompson in employment because of her age, is proper.

II. C. RETALIATION

To state a claim of retaliation, Thompson must allege that (1) she was opposing illegal discrimination; (2) thereafter, CMC took an adverse employment action against her; and (3) there is a causal connection between the protected activity and CMC’s alleged action. Mont. Admin. R. 24.9.610(2)(a)(iii); Rolison at ¶17.

Thompson alleged that she complained to CMC about Biggins’ statements to other employees about Thompson’s age and pace-maker. She alleged that after her complaints her number of shifts declined because of the hire of another EEG tech and then she was not scheduled at all in December 2009. She alleged that there was a “sufficient nexus” between her complaints and those later events to make the causal connection between her protected activity and the adverse actions. Thompson asserted a prima facie case of retaliation.

CMC interposed the same defense, and the same evidence in support of it. That evidence is as substantial with regard to the retaliation claim as it was for the two discrimination claims.

⁸ It is again unnecessary for the Hearing Officer to decide whether the diminishing hours Thompson worked in 2009, under these facts, could be an adverse employment action.

Since Thompson still has no evidence that Biggins made the statements she alleges he made about her age and pace-maker, Thompson's retaliation case largely rests upon the same conclusory argument that CMC's justifications could be false. Unless she has more to buttress her retaliation claim, the outcome will be the same.

Because this is an opposition rather than a participation claim, Montana's rebuttable presumption of a causal connection between participation and adverse action while or within six months after the protected activity is inapplicable. Admin. R. Mont. 24.9.603(3). Since that presumption is inapplicable, it does not buttress her retaliation claim.

Proximity in time between opposition to illegal discrimination and following adverse action can also trigger a common law presumption of causal connection. *Hamner v. St. Vin. Hosp. & Health Care Ctr.*, 224 F. 3rd 701, 707 (7th Cir. 2000).⁹

That presumption might have been the frayed thread upon which Thompson's retaliation claim could hang, except for the chronology of events. CMC's evidence of the problems with Thompson's slow completion of EEG exams stretches back to late 2008. CMC's economic problems generated the mandate to cut costs by 5% in all departments in February 2009. The justification CMC established for taking the actions that led to Thompson's reduced hours were already realities before either of Thompson's complaints to Biggins about what he was allegedly saying to other employees. Given this chronology and the absence of any proof that Biggins actually did talk to other employees about Thompson's age, pace-maker or complaints, that presumption is simply not sufficient to raise a genuine issue of material fact.

On the present record, no reasonable fact-finder could decide that CMC took adverse employment action¹⁰ against Thompson because of her alleged opposition to illegal discrimination. There being no genuine question of material fact and the record establishing CMC's entitlement to judgment as a matter of law, summary judgment in favor of CMC is proper, that it did not illegally retaliate against Thompson in employment because of her internal complaints about Biggins' alleged statements to other employees about her age and pace-maker.

III. CONCLUSION

This Hearing Officer has always been very reluctant to grant summary judgments and truncating the development of a full record. However, this is the rare

⁹ Montana follows federal precedent, when it is consistent with the substance and purposes of our law. *Crockett v. City of Billings* (1988), 234 Mont. 87; 761 P.2d 813, 819 (1988).

¹⁰ It is again unnecessary for the Hearing Officer to decide whether the diminishing hours Thompson worked in 2009, under these facts, could be an adverse employment action.

case in which there are no genuine issues of material fact and summary judgment on all claims is proper as a matter of law.

At all times, Thompson retained the burden of persuasion. When CMC articulated a legitimate, nondiscriminatory reason for its employment actions, she had the opportunity and the burden to demonstrate that the proffered reason was false. Heiat at 791-792. On this record, Thompson did not establish, on any of her claims, a basis upon which any reasonable fact-finder could avoid deciding this case in favor of CMC. It would be error for the Hearing Officer to deny summary judgment and force the parties to a hearing that CMC will, on this evidence, win.

For all of these reasons, summary judgment is granted on all counts, that CMC did not illegally discriminate against Thompson because of a perceived disability or because of her age, and did not illegally retaliate against her for her opposition to illegal discrimination. Thompson's complaint is dismissed on the merits.

DATED: August 25, 2011

/s/ TERRY SPEAR
TERRY SPEAR, Hearing Officer
Hearings Bureau, Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Elizabeth O'halloran, attorney for Ann Thompson, Candace Fetscher, attorney for Community Medical Center:

The summary judgment order of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c)

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission
c/o Katherine Kountz
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505 (4), precludes extending the appeal time for post decision motions seeking relief from the Hearings Bureau, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

THERE WAS NO HEARING AND THEREFORE IS NO HEARING TRANSCRIPT. Contact Kim Howell, (406) 444-4341 with any questions regarding preparation of the record for appeal.